

SENATE BILL REPORT

ESSB 5774

As Amended by House, April 10, 2007

Title: An act relating to revising background check processes.

Brief Description: Revising background check processes.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Kohl-Welles, Brandland and Shin; by request of Department of Social and Health Services).

Brief History:

Committee Activity: Human Services & Corrections: 2/06/07, 2/21/07 [DPS-WM].
Ways & Means: 2/27/07, 3/02/07 [DPS(HSC)].
Passed Senate: 3/13/07, 45-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5774 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Marr and McAuliffe.

Staff: Indu Thomas (786-7459)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5774 as recommended by Committee on Human Services & Corrections be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hatfield, Hewitt, Hobbs, Keiser, Kohl-Welles, Oemig, Parlette, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Tom.

Staff: Paula Moore (786-7449)

Background: Background checks are conducted for employment and licensing decisions and many other purposes related to the security of persons and property. In recent years, reports of abuse of children and vulnerable adults have led to increased requirements for background checks for anyone who works with children or vulnerable adults. Background checks conducted through the Washington State Patrol include information regarding criminal

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adjudications. Background checks are also available through private data mining companies. The reports provided by private entities have come to include information regarding civil adjudications as well as criminal history record information.

The Joint Task Force on Criminal Background Check Processes was established in 2004 by ESHB 2556 (Chapter 41 of the Laws of 2004). This task force met for three years and considered how to improve the state's criminal background check processes. The task force discovered that there is variance in how authorized agencies, such as the Department of Social and Health Services (DSHS), the Department of Health, and the Department of Licensing, obtain criminal background records on their employees or on persons who contract or are licensed by them. The members of the task force received information regarding the federal and state laws regarding sharing confidential information of prospective employees of public and private entities which work with vulnerable adults or children. The task force recommended the establishment of a workgroup to explore ways which would ensure consistent and equivalent access to information for all background checks for noncriminal justice purposes.

DSHS requests background check information from the Washington State Patrol to aid in the investigation and litigation of cases of abuse and neglect that may have involved a child, persons with developmental disabilities, or a vulnerable adult. In addition, DSHS requests criminal background record information on prospective applicants who will have unsupervised access to individuals with a developmental disability, persons with mental illnesses, vulnerable adults, or children. Conviction history record information obtained through the Washington State Patrol includes all available convictions, arrests under one year old without disposition, and sex and kidnapping offender registrations. DSHS is authorized by the Legislature to conduct national fingerprint-based background checks on individuals who have resided outside of the state of Washington in the past three years and will be providing services to people with disabilities, children, or vulnerable adults receiving in-home services.

In 2004, the Washington State Legislature created a Joint Task Force on Criminal Background Check Processes (Task Force) to review and make recommendations to the Legislature and the Governor regarding how to improve the state's criminal background check processes. The Task Force was extended through December of 2006. Over the past three years, the Task Force has reviewed multiple laws governing the background check processes pertaining to DSHS.

In June 2006, the federal government enacted the Adam Walsh Act, which requires the state, prior to placing a child in a home, to conduct the following background checks on any prospective foster parent, adoptive parent, kinshipcare provider, and any other adult living in the home: (1) finger print criminal background check against the national crime information database; or (2) search in the state's child abuse and neglect registry, or if the adult resided in a different state(s) in the preceding five years, any other state's child abuse and neglect registry.

Summary of Engrossed Substitute Bill: The state, prior to placing a child in a home, must conduct the following background checks on any prospective foster parent, adoptive parent, kinshipcare provider, and any other adult living in the home: (1) finger print criminal background check against the national crime information database; or (2) search in the state's child abuse and neglect registry, or if the adult resided in a different state(s) in the preceding

five years, any other state's child abuse and neglect registry. DSHS is required to confirm that applicants or service providers are United States citizens or eligible non-citizens.

DSHS is required to convene a workgroup to research state and federal laws regarding background checks. The workgroup is to include representatives of DSHS, the Department of Early Learning, the Office of the Superintendent of Public Instruction, the Department of Licensing, the Washington State Patrol, the Civil Rights Committee of the Washington State Bar Association, the Washington Association of Criminal Defense Attorneys, the Washington Association of Sheriffs and Police Chiefs, the Administrative Office of the Courts, and the Department of Information Services. The group must also include, as non-voting ex officio members, representatives from the two largest caucuses in the House of Representatives and the Senate. The group is required to make recommendations to the Legislature and the Governor regarding improving processes for sharing confidential information. These recommendations will also include an analysis of the feasibility of creating a clearinghouse of information. The report of the workgroup is due to the Legislature by November 30, 2008.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):

PRO: DSHS background check laws are based on the client and the type of service provided. This approach has created multiple laws under the authority of the Washington State Patrol, the Department of Personnel, and DSHS. There are three different crimes lists, differing levels of review of abuse, neglect, and exploitation findings and varying requirements for rechecks. All of the clients served are vulnerable; therefore, it is good policy to have consistent standards and requirements. This bill consolidates and revises existing background check statutes and provides for more effective and consistent protection for vulnerable citizens receiving DSHS services. The Department of Early Learning provisions in this bill are at Sections 12 and 13; Section 12 relates to the licensing staff and Section 13 makes a technical correction. This bill should be expanded to include private duty in-home care services.

Persons Testifying (Human Services & Corrections): PRO: Robin Arnold-Williams, DSHS; Susan Miller, CareForce; Leslie Emerick, Home Care Association of Washington; Peter Antolin, DEL.

Staff Summary of Public Testimony on Substitute Bill (Ways & Means): PRO: We support the department request bill as streamlined by the policy committee. The funding for this bill is absolutely critical for the policy to work, as currently foster parents can wait months and months to receive their background check.

Persons Testifying (Ways & Means): PRO: Stan Marshburn, Department of Social and Health Services, Chief Financial Officer; Laurie Lippold, Children's Home Society of Washington.

House Amendment(s): The requirement for a finding of financial hardship in order for DSHS to pay fees associated with background checks for foster parents is removed. The requirement for DSHS to check the citizenship or visa status of individuals is eliminated.

The work group is required to examine the need for and feasibility of verifying citizenship or immigration status of persons for whom background checks are required, and to analyze the use of background check information in making employment decisions, including how the information may disqualify persons from employment. Finally, the criteria the work group is to consider is specified.

The Washington State Patrol statutes are amended to allow for the exchange of information with the Department of Early Learning to conduct mandatory background checks relating to child care licensing and approval and to make a technical correction to maintain the DSHS rule-making authority for background checks. Employees of the Department of Early Learning are made mandatory reporters of child abuse and neglect.